

the Jasuta / Schulman report

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TIBA's Case of the Week

Court of Criminal Appeals

Case Name: *Ex parte William Keith Speer*

- **NATURE OF CASE:** Post-Conviction *Habeas Corpus*
- **COUNTY:** Bowie
- **CCA. CASE No.** AP-77,119 **DATE OF OPINION:** September 24, 2025
- **DISPOSITION:** Dismissal Ordered
- **OPINION:** [Per Curiam](#) **VOTE:** 8-1-0
- **TRIAL COURT:** 5th D/C
- **LAWYERS:** [Donna Coltharp](#) (Defense); [Melinda Fletcher](#) (OAG)

(Background Facts): Applicant was convicted of capital murder and sentenced to death in October 2001. In unpublished 2003, 2004, and 2010 opinions & order, the Court of Criminal Appeals affirmed Applicant's conviction and sentence on direct appeal, denied relief on his initial application for a writ of *habeas corpus* filed under Article 11.071, C.Cr.P., and dismissed as an abuse of the writ his first subsequent 11.071 application.

Ed Note (Procedural History): In July 2023, the convicting court entered an order setting Applicant's execution date for October 26, 2023. On October 4, 2023, attorneys for Applicant filed a *habeas corpus* application "Under Article I, § 12 of the Texas Constitution & Texas Code of Criminal Procedure Article 11.05," alleging that on August 23, "an uncontrolled building fire [had] catastrophically damaged the third floor of the Administration Building at the Huntsville Unit of the Texas Department of Criminal Justice." Applicant further alleged that: (A) this is the location where the Texas Department of Criminal Justice (TDCJ) stores pentobarbital, the chemical it uses to carry out executions; and (B) as a result of the fire and ensuing fire-suppression efforts, TDCJ's supply of pentobarbital was exposed to several hours of high temperatures, smoke, and water. He also alleged that, even before the fire, TDJC's "supply of phenobarbital had expired," and that the use of "fire-damaged" and/or expired drugs to carry out his execution, would "cause [him] significant and unnecessary pain and suffering." He prayed that the trial court would (1) "Grant a temporary injunction of TDCJ's use of expired drugs and drugs affected by the August 25, 2023 Huntsville Unit fire in his imminent execution;" (2) "Permit discovery and factual development procedures;" (3) "Hold an evidentiary hearing;" and (4) "Grant such other relief as law and justice require." The convicting court denied relief on the merits on October 12, 2023. The court found

that Applicant “only provided speculation with respect to his claims,” and so “fail[ed] to meet the threshold requirement for relief.” On October 17, 2023, Applicant filed an “original” *habeas corpus* application, raising many of the claims he had raised in the convicting court, and arguing that the CCA should grant leave to file because, among other reasons, “when an application raises claims concerning how the State carries out its death sentences, it is appropriate for this Court to resolve these grave issues directly,” rather than by reviewing lower-court judgments for error. The Court denied leave to file without a written order on October 25, 2023. The next day, the CCA stayed Applicant’s execution. On November 10, Applicant notified the convicting court in writing that he intended to appeal the court’s October 12 order denying relief. Applicant’s notice of appeal stated that the appeal would be “to the Court of Appeals for the Sixth District of Texas.” Shortly after filing his notice of appeal, Applicant received word from the Court of Appeals’ clerk that “this [appeal] needs to go to the Court of Criminal Appeals.” On December 1, 2023, the CCA “received a courtesy copy of the notice of appeal and docketed the case.”

[§§ 207 Trial Courts / Jurisdiction]: Although Applicant raised five issues in his appellate brief, the Court of Criminal Appeals determined that it would be appropriate to examine the convicting court’s jurisdiction to rule on the merits of Applicant’s *habeas* application. See *Skinner v. State*, 484 S.W.3d 434 (Tex.Cr.App. 2016)(see §§, Vol. 24, No. 11; 03/14/2016)(“jurisdiction is a systemic requirement that appellate courts must review regardless of whether the issue is raised by the parties”).

Holding: We have repeatedly held that a district court does not enjoy “general” jurisdiction after a conviction becomes final. E.g., *In re TDCJ*, 710 S.W.3d 731 (Tex.Cr.App. 2025)(see §§, Vol. 33, No. 12; 03/31/2025); see also *In re State ex rel. Ogg*, 692 S.W.3d 481 (Tex.Cr.App. 2024)(see §§, Vol. 32, No. 30; 08/05/2024); *Skinner*, 484 S.W.3d at 437. Rather, “any jurisdiction a trial court obtains post-finality must be conferred by the Texas Constitution or by statute, and any provision bestowing post-finality jurisdiction defines the scope of that jurisdiction.” *In re TDCJ*, 710 S.W.3d at 735–736. *** As for the convicting court’s constitutional *habeas* jurisdiction, as mentioned, Article V, Section 8 of our Constitution provides that district courts retain “jurisdiction of all actions, proceedings, and remedies, except in cases where . . . jurisdiction may be conferred by this Constitution or other law on some other court.” *** Under Texas law as laid out in *Holmes v. Third Court of Appeals*, 885 S.W.2d 389 (Tex.Cr.App. 1994), outside of the circumstances described in Article 43.141, C.Cr.P., constitutional jurisdiction has been “conferred” on this Court -- and this Court alone -- to stay a lawfully scheduled execution. *** And while the Legislature has declared that a convicting court may recall a duly issued death warrant in some circumstances, those circumstances are narrow and exclusive, and do not include the filing of a constitutional writ application. *** “Clearly, the Legislature may provide for the orderly administration of remedies guaranteed by the Constitution without thereby eliminating their effectiveness or compromising the constitutional jurisdiction of the courts.” *** The convicting court lacked jurisdiction to rule on the merits of Applicant’s “Application for Writ of Habeas Corpus Under Article I, § 12 of the Texas Constitution & Texas Code of Criminal Procedure Article 11.05.” We return this case to the convicting court with instructions to dismiss the application for lack of jurisdiction.

Concurring / Dissenting Opinions: [Judge Kevin Yeary](#) filed a concurring opinion agreeing with the majority, “with one caveat.” Judge Yeary stated that he did not understand the Court’s stated limitation on the availability of *habeas corpus* relief under the circumstances “necessarily” to preclude Appellant from seeking some other form of extraordinary relief, such as by seeking an application for a writ of prohibition. *“Whether such other non-habeas-corpus extraordinary writ process may also be available to Appellant under the circumstances of this case is not before us today.”*

Sidebars

([David A. Schulman](#)) Unless the overall strategy here was to do everything possible to delay execution, meaning (for example) let’s go to the Sixth Court so it will delay getting to the CCA, even though we know it’s the CCA with jurisdiction, giving notice of appeal to an intermediate appellate court seems totally bizarre. That notwithstanding, that only the CCA can “stay a lawfully scheduled execution” is just as old a concept as the Court indicates it is.

([John G. Jasuta](#)) I agree with David that this appears to be an effort to keep the ball in the air as long as possible but I am intrigued by Judge Yeary’s minimalist concurring opinion. I, perhaps like him, also wonder if some other type of action is more appropriate to attack or stop the use of possibly contaminated chemicals in administering the death penalty but I also always thought, what’s in a name?